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MISSOURI BOARD
OF PHARMACY

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF
PHARMACY AND JOHN L. KEENER**

Come now John L. Keener ("Licensee" or "Respondent") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Licensee's license as a pharmacist will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time it may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the draft complaint, the investigative report, and other documents relied upon by the Board in determining there was cause to discipline his license.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's license, numbered 040725, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

JOINT STIPULATION OF FACTS

1. The Missouri Board of Pharmacy ("the Board"), is an agency of the State of Missouri created and established by Section 338.110, RSMo, for the purpose of administering and enforcing the provisions of Chapter 338, RSMo.

2. Respondent, John L. Keener, is licensed by the Missouri Board of Pharmacy as a registered pharmacist, as defined in Section 338.010 RSMo. Respondent's license, numbered 040725, is current and active and was so at all times material herein.

3. At the time of the events alleged herein, Respondent was the pharmacist-in-charge of Comprehensive Pharmaceutical d/b/a Dunavant Drugs ("Dunavant Drugs").

4. From January 2003, to January 2006, Dunavant Drugs dispensed controlled substances to Dr. Kent L. Davis of Paris, Kentucky, that Dr. Davis prescribed for himself.

5. The owner of Dunavant Drugs was married to the sister of Dr. Davis, thus making the owner and Dr. Davis brothers-in-law.

6. In correspondence dated March 14, 2006, from Kent L. Davis, M.D. to

Eric V. Trout, Medical Investigator for the Kentucky Board of Medical Licensure, Dr.

Davis stated:

. . . Over the last three years I have obtained from my brother-in-law monthly supplies of Tramadol (200 tablets/month), Ambien 10 mg (30 tablets/month) and Fioricet (60 tablets/month) . . .

7. In re *The License to Practice Medicine in the Commonwealth of Kentucky Held by Kent L. Davis, M.D., License No. 20186, 274 East Main Street, Paris, Kentucky 40361*, Case No. 1054, Dr. Davis entered into an *Agreed Order of Indefinite Restriction* on June 12, 2006, with the Kentucky Board of Medical Licensure.

8. In the *Agreed Order of Indefinite Restriction*, Dr. Davis stipulated, among other facts, that (1) he had a substance abuse problem and had begun an affiliation with the Kentucky Physicians Health Foundation and (2) that he would provide a prescription to his brother-in-law, a pharmacist in Missouri, and then receive drugs from his brother-in-law through the mail.

9. By his own admission, Dr. Davis is an impaired physician.

10. Respondent dispensed Ambien™, a controlled substance, to Dr. Davis for his own personal use.

11. During the fact finding meeting on December 14, 2006, Respondent stated that he was aware that Missouri doctors could not prescribe controlled substances for themselves.

12. Ambien™ is a drug that is not used in a medical emergency.

13. The dispensing of this controlled substance did not constitute a medical emergency and is in violation of Section 195.070(1) and (4), RSMo, which state:

1. A physician, podiatrist, dentist, or a registered optometrist certified to administer pharmaceutical agents as provided in section 336.220, RSMo, in good faith and in the course of his or her professional practice only, may prescribe, administer, and dispense controlled substances or he or she may cause the same to be administered or dispensed by an individual as authorized by statute.

4. An individual practitioner may not prescribe or dispense a controlled substance for such practitioner's personal use except in a medical emergency.

14. By dispensing these drugs to Dr. Davis for his own personal use, Dr. Davis was allowed to prescribe controlled substances for himself outside of the jurisdiction and parameters of the Kentucky All Prescription Electronic Report (KASPER) Program so that regulatory authorities would not be aware of these prescriptions.

15. Respondent did not contact regulatory authorities in Missouri regarding the dispensing of controlled substances to Dr. Davis for his own personal use.

16. Respondent lacked due diligence in the areas of dispensing and shipping controlled substances to Dr. Davis for his own personal use.

17. As pharmacist-in-charge, Respondent's failure to assure the pharmacy was in compliance with all state and federal laws is in violation of 20 CSR 2220-2.090(2) which states in material parts:

(2) The responsibilities of a pharmacist-in-charge, at a minimum, will include:

* * *

(E) Assurance that all procedures of the pharmacy in the handling, dispensing and recordkeeping of controlled substances are in compliance with state and federal laws;

(F) Any excessive or suspicious requests, or both, for the dispensing of controlled substances be verified prior to dispensing;

* * *

(N) The pharmacist-in-charge will be responsible for the supervision of all pharmacy personnel, to assure full compliance with the pharmacy laws of Missouri;

* * *

(P) Policies and procedures are in force to insure safety for the public concerning any action by pharmacy staff members or within the pharmacy physical plant;

* * *

(W) Assure full compliance with all state and federal drug laws and rules.

18. As pharmacist-in-charge, Respondent was responsible for the pharmacy being in compliance with Missouri laws and regulations.

19. As pharmacist-in-charge, Respondent violated Missouri rules and regulations governing the practice of pharmacy by failing to assure the all procedures of the pharmacy in the handling and dispensing of controlled substances were in compliance with Missouri rules and regulations.

20. The employees and customers of Dunavant Drugs had a relationship of professional trust and confidence in Respondent in that employees and customers of Dunavant Drugs relied on Respondent to make reasonable efforts to ensure compliance with all relevant pharmacy and drug laws and standards of practice.

21. Respondent's conduct alleged herein constitutes a violation of the

professional trust and confidence placed in Respondent by Dunavant Drugs' employees and customers.

22. As pharmacist-in-charge, Respondent should have known that violations of pharmacy laws or rules had occurred.

JOINT CONCLUSIONS OF LAW

23. Cause exists for Petitioner to take disciplinary action against Respondent's license under Section 338.055 RSMo, which states in relevant parts:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter.

* * *

(13) Violation of any professional trust or confidence.

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

JOINT AGREED DISCIPLINARY ORDER

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Section 621.045.3, RSMo:

1. Respondent's pharmacist license, License No. 040725, is hereby PUBLICLY CENSURED.

2. The terms of this Settlement Agreement are contractual, legally enforceable, binding, and not merely recitals. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

3. Respondent, together with his heirs and assigns, and his attorneys, does hereby waive and release the Board, its members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. Section 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.


RESPONDENT

PETITIONER

MISSOURI BOARD OF PHARMACY



John L. Keener

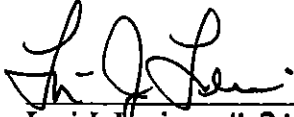
By: 

Thomas Glaser
Chief Inspector

Date: 11-10-2008

Date: 12-2-08

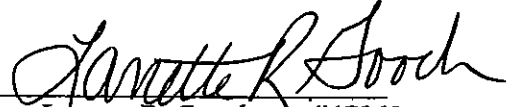
CARSON & COIL, P.C.

By: 

Lori J. Levine #26172
515 East High Street
P.O. Box 28
Jefferson City, MO 65102-0625
Telephone: 573/636-2177
Fax: 573/636-7119

Attorneys for Respondent

NEWMAN, COMLEY & RUTH
P.C.

By: 

Lanette R. Gooch #47860
601 Monroe, Suite 301
P.O. Box 537
Jefferson City, MO 65102
Telephone: 573/634-2266
Fax: 573/636-3306

Attorneys for Petitioner